

**CITY OF EL PASO, TEXAS
REQUEST FOR COUNCIL ACTION (RCA)**

DEPARTMENT: STREETS
AGENDA DATE: April 12, 2005
CONTACT PERSON/PHONE: Daryl Cole, 621-6750
DISTRICT(S) AFFECTED: ALL

CITY CLERK DEPT
05 APR -4 AM 11:56

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

A resolution authorizing the Mayor to sign a Termination and Release Agreement between the City and the El Paso Garden Clubs.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

In 1980 the City entered into a lease agreement with the El Paso Garden Clubs leasing them a portion of the park located on Grant Street (Memorial Park). It was a 30 year lease. The Agreement allowed the Garden Club to build structures, which they did. The Garden Clubs no longer wants to lease the property and wishes to donate the structure (a building) to the city. The CAD appraisal for the structure is \$20,000.00. This action will terminate the lease and the building located on the property will be given to the City.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

No

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

*******REQUIRED AUTHORIZATION*******

LEGAL: (if required) approved _____ **FINANCE:** (if required) N/A

DEPARTMENT HEAD: Daryl W. Cole
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Termination and Release Agreement between the City of El Paso and El Paso Council of Garden Clubs f/k/a El Paso Garden Clubs, Inc, which will terminate a lease entered into by the City and the Garden Clubs, on May 27, 1980 and provide that all improvements on the leased premises be donated to the City.

ADOPTED this _____ day of April, 2005.

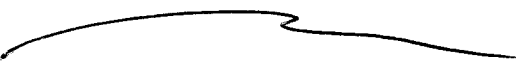
THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Lupe Cuellar
Assistant City Attorney

STATE OF TEXAS }
 }
COUNTY OF EL PASO } **TERMINATION AND RELEASE**

This Lease Termination and Release Agreement, hereinafter "Agreement", is made this _____ day of _____, 2005, by and between the City of El Paso, hereinafter "City" or "Lessee", and El Paso Council of Garden Clubs f/k/a El Paso Garden Clubs, Inc, hereinafter "Lessor".

WITNESSETH

WHEREAS, the City of El Paso, Texas, and El Paso Council of Garden Clubs f/k/a El Paso Garden Clubs, Inc., (lessee) entered into a lease agreement ("Lease") May 27, 1980 for a term of thirty years for a certain property legally described as Improvements on 2.12 Acres of Memorial Park adjacent East of Block "7", in the CASTLE HEIGHTS ADDITION, El Paso, El Paso County, Texas, also known as 3105 Grant, El Paso, El Paso County, Texas ("Property") said lease is attached hereto marked Exhibit "A" and made a part hereof by reference; and,

WHEREAS, the Lessee wishes to terminate said Lease so as to terminate all of their rights to possession of the afore described leased premises and they wish to donate any improvements erected on said leased premises to the City; and,

WHEREAS, the City finds that the termination of the May 27, 1980 Lease shall cancel any further obligation on the part of the Lessee to make lease payments or any other type of payments under the lease or consideration after the date of surrender of the Leased premises; and

WHEREAS, the City finds that the termination of the May 27, 1980 Lease and the acceptance of the donation of the improvements on the leased property serves a public purpose and is in the public interest;

NOW THEREFORE, the City and Lessee mutually agree as follows:

AGREEMENT

1. That the above referenced lease dated May 27, 1980 is hereby mutually terminated effective _____, 2005. This action is to the mutual benefit of the City and Lessee.
2. The existing building and improvements located on the leased premises are hereby declared to be the sole property of the City and the Lessee hereby forever releases any and all claim to same of whatsoever nature or kind.
3. The transfer of possession of the leased premises with improvements is of sufficient benefit and consideration to the City for future use of the property for its plans, so that further payments of lease rental or "Termination Value" or any other obligation or obligations as set forth in the May 27, 1980 lease agreement is not required. It is the intention of the parties that the termination of the lease, is to be without cost, obligation or liability on the part of the City or the Lessee. Notwithstanding anything in the May 27, 1980 lease agreement, as amended, to the contrary,

the Lessee hereby forgives, releases and forever discharges the City from any obligation to make a so-called "Termination Value" payment to the City and any other obligation or liability under the lease agreement. It is expressly agreed that, after the date of surrender of the leased premises, the City shall have no further duty or obligation of any kind to make any payments of any kind to the Lessee.

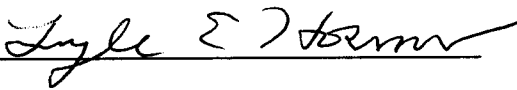
4. The City and the Lessee do hereby forever, release and discharge each other from any and all obligation, claim, cause of action, whether know or unknown, directly or indirectly related to the lease of the leased premises and all improvements thereon by the Lessee Clubs. The City hereby accepts the lease premises and its improvements "AS IS" with no expectation as to condition or fitness for a particular use.
5. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Texas. Venue for any action shall be in El Paso County, Texas.
6. This document shall be construed as equally binding on the parties and the fact that one party or the other drafted the document shall not be interpreted as requiring a strict construction of the provisions of the instrument against either party.

IN WITNESS WHEREOF, this Lease Termination and Release has been executed by the parties named hereinabove as of the date, month and year first written above.

THE CITY OF EL PASO

Joyce Wilson, City Manager

COUNCIL OF EL PASO GARDEN CLUBS

By: 
Title: PRESIDENT

APPROVED AS TO FORM:

Guadalupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Daryl W. Cole, Director
Streets Department